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where the foreman is engaged in the discharge of an unassignable duty for the master, he is not a fellow servant, but a vice principal.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 449, 450, 453, 468.* 6 Va.-W. Va. Enc. Dig. 7.]

For other definitions, see Words and Phrases, First and Second Series, Vice Principal.]

7. Master and Servant (§ 109*)—Injuries to Servant—Vicious Animal—Safety Appliance Rule.—The safe appliance doctrine imposed upon the master the duty of using ordinary care to furnish plaintiff, as stable boss, with a reasonably safe mule in connection with the duties imposed upon him by that employment.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 204.* 9 Va.-W. Va. Enc. Dig. 677.]

Error to Circuit Court, Henrico County.

Action by Charles Turner, a minor, by his next friend against the Richmond & Rappahannock River Railway Company Judgment for defendant on second trial after verdict for plaintiff was set aside, and plaintiff brings error. Reversed, and judgment entered for plaintiff upon the original verdict.

Smith & Gordon and *James F. Minor*, all of Richmond, for plaintiff in error.

Williams & Mullen and *Thomas P. Bryan*, all of Richmond, for defendant in error.

GOOCH v. SUHOR.

June 14, 1917.

[92 S. E. 843.]

1. Executors and Administrators (§ 17 (3)*)—Right to Appointment—Antenuptial Agreement.—Where a wife by an antenuptial agreement has relinquished her claim to her husband's property, neither she nor any person designated by her has the right of administration of his estate under Code 1904, § 2039, relative to the appointment of administrators, unless the agreement has been canceled.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. §§ 45-47.* .5 Va.-W. Va. Enc. Dig. 509.]

2. Courts (§ 200 $\frac{1}{4}$ *)—Probate Courts—Jurisdiction—Marriage Settlements.—In the absence of any statute conferring general equity

*For other cases see same topic and KEY-NUMBER in all Key Numbered Digests and Indexes.

jurisdiction on courts of probate, such courts have no jurisdiction over marriage settlements.

[Ed. Note.—For other cases, see Courts, Cent. Dig. §§ 476, 477.* 8 Va.-W. Va. Enc. Dig. 885, 886.]

3. Courts (§ 200½*)—Probate Courts—Jurisdiction—Validity of Antenuptial Agreement.—Where a circuit court was not exerting its general equity jurisdiction, but was merely discharging the limited functions of the probate court in the matter of appointing an administrator or curator for an estate, it had no jurisdiction to determine the validity of an antenuptial agreement attacked by one petitioning to qualify as administratrix.

[Ed. Note.—For other cases, see Courts, Cent. Dig. §§ 476, 477.* 8 Va.-W. Va. Enc. Dig. 885, 886.]

4. Courts (§ 202 (2)*)—Jurisdiction—Form of Proceeding.—Where a petition filed in circuit court to set aside an antenuptial agreement and permit petitioner to qualify as administratrix neither made parties nor prayed that those representing adverse interests to the petitioner be brought in, and no process was awarded or issue joined as to such interests, and the petition concluded with a request that if the court found itself to be without jurisdiction to determine the validity of the antenuptial agreement it should appoint petitioner's nominee as curator pending proceedings to be brought by her in another court to determine the validity of such contract, the state of the pleadings prohibited the court from taking cognizance of the dispute over the validity of the antenuptial agreement.

[Ed. Note.—For other cases, see Courts, Cent. Dig. § 483.* 8 Va.-W. Va. Enc. Dig. 858, 859.]

5. Executors and Administrators (§ 18*)—Curator—Qualifications.—There is no inherent incompatibility in the office of trustee under an antenuptial agreement and the office of curator of the estate of the deceased husband pending proceedings to be instituted by the wife to set aside the antenuptial agreement and permit her to receive a share of the estate.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. §§ 60-77.* 5 Va.-W. Va. Enc. Dig. 506.]

6. Appeal and Error (§ 1061 (2)*)—Harmless Error—Dismissal of Petition.—Alleged error in dismissing a petition for appointment of administrator in a proceeding wherein a curator was appointed for the estate pending proceedings to be instituted by the petitioner was harmless, where the dismissal was without prejudice to the petitioner's rights.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4209.* 1 Va.-W. Va. Enc. Dig. 582, 587.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Circuit Court, Mecklenburg County.

Petition by Margaret Radcliffe Gooch against Annie W. Suhor to set aside marriage contract and secure appointment as administratrix. From an adverse order, petitioner brings error. Affirmed.

Buford & Peterson, of Lawrenceville, *C. T. Baskerville*, of Boydton, and *S. E. Williams*, of Lexington, N. C., for plaintiff in error.

S. S. P. Patteson and *H. M. Smith, Jr.*, both of Richmond, for defendant in error.

GOOCH v. OLD DOMINION TRUST CO. et al.

June 14, 1917.

[92 S. E. 846.]

1. Equity (§ 22*)—Administration of Estate.—The curator of an estate had a right to invoke the assistance of a court of equity in the administration of the estate where there was doubt as to what the law was and what its conduct should be under the law to preserve the estate pending litigation for those to whom it should be ultimately determined that it rightfully belonged.

[Ed. Note.—For other cases, see *Equity*, Cent. Dig. §§ 51-62.* 5 Va.-W. Va. Enc. Dig. 698.]

2. Supersedeas (§ 8*)—Violation—Suit by Curator.—A suit brought by the curator of an estate to secure instructions as to its duties was not violative of a supersedeas order in a proceeding involving the estate, where the object was to preserve the property of the estate pending litigation for whomsoever should ultimately be adjudged the rightful owner.

[Ed. Note.—For other cases, see *Supersedeas*, Cent. Dig. § 8.* 1 Va.-W. Va. Enc. Dig. 527.]

Appeal from Circuit Court, Mecklenburg County.

Suit by the Old Dominion Trust Company, as curator of the estate of W. H. Gooch, deceased, against Margaret Radcliffe Gooch and others. From decree for plaintiff, the defendant named appeals. Affirmed.

Buford & Peterson, of Lawrenceville, *S. E. Williams*, of Lexington, N. C., and *C. T. Baskerville*, of Boydton, for appellant.

S. S. P. Patteson and *H. M. Smith, Jr.*, both of Richmond, for appellees.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.